

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

STANLEY LINZY,)	
)	
Plaintiff,)	
)	
vs.)	Case No. CIV-16-1031-W
)	
JASON BRYANT, Warden,)	
James Crabtree Correctional)	
Center, et al.,)	
)	
Defendants.)	

REPORT AND RECOMMENDATION

Stanley Linzy (Plaintiff), a state prisoner appearing pro se, filed this civil rights action under 42 U.S.C. § 1983, alleging violations of his constitutional rights. Doc. 1.¹ United States District Judge Lee R. West has referred the matter to the undersigned Magistrate Judge for initial proceedings consistent with 28 U.S.C. § 636(b)(1)(B), (C). Doc. 5.

With his complaint, Plaintiff submitted a motion seeking leave to proceed in forma pauperis. Doc. 2. The undersigned entered an order consistent with 28 U.S.C. § 1915(b)(1), granting the motion and directing Plaintiff to pay an initial partial filing fee of \$17.63 on or before September 28, 2016. Doc. 6, at 1. The undersigned specifically advised Plaintiff “that unless by the date specified . . . he has either (1) paid the initial partial filing

¹ This report cites court filings by their electronic case filing designation and pagination.

fee, or (2) shown cause in writing for the failure to pay, this action will be subject to dismissal without prejudice to refiling, and no fees or costs will be imposed or collected.” *Id.* at 1-2. Plaintiff did not respond, and the undersigned sua sponte extended the deadline until October 21, 2016. Doc. 7. Once again, Plaintiff did not respond. Both orders, Docs. 6, 7, were sent to the last address Plaintiff provided to the court and neither has been returned to the court as undeliverable. Under this Court’s local rules (LCvR), the orders are “deemed delivered.” LCvR 5.4(a).²

Plaintiff failed to pay the initial filing fee as ordered and he has not shown—or made any attempt to show—cause for nonpayment, and dismissal of his action without prejudice to refiling is warranted under Fed. R. Civ. P. 41(b). *See Hill v. Fort Leavenworth Disciplinary Barracks*, No. 16-3097, 2016 WL 4539948, at *2 (10th Cir. Aug. 30, 2016) (holding the district court did not abuse its discretion in dismissing an action without prejudice when, “[d]espite warnings from the district court, [Plaintiff] failed to pay the statutorily mandated filing fee and failed to otherwise establish his inability to pay”).

² The court’s docket sheet shows that on September 7, 2016, the Clerk of Court notified Plaintiff of his obligation to notify the court of any change of address.

Recommendation and Notice of Right to Object

For the stated reasons, the undersigned recommends the dismissal of Plaintiff's action under Fed. R. Civ. P. 41(b), without prejudice to refiling.

The undersigned advises Plaintiff of his right to file an objection to this Report and Recommendation with the Clerk of Court on or before November 17, 2016, under 28 U.S.C. § 636(b)(1) and Fed. R. Civ. P. 72(b)(2). The undersigned further advises Plaintiff that failure to file a timely objection to this Report and Recommendation waives his right to appellate review of both factual and legal issues contained herein. *Moore v. United States*, 950 F.2d 656, 659 (10th Cir. 1991).

This Report and Recommendation disposes of all issues referred to the undersigned Magistrate Judge in the captioned matter.

ENTERED this 28th day of October, 2016.



SUZANNE MITCHELL
UNITED STATES MAGISTRATE JUDGE